

On December 8, 2004 appellant, a 51-year-old administrative law judge, filed a traumatic injury claim for soft tissue injuries to his neck and right foot arising from a December 6, 2004 motor vehicle accident. The employing establishment informed the Office that appellant was on official travel status in St. Louis, Missouri, from December 5 to 10, 2004. On December 6, 2004

appellant's official duties ended at approximately 5:00 p.m. Appellant reported that the accident occurred at 6:40 p.m. According to the employing establishment, the accident occurred within 10 miles of their downtown St. Louis office, where appellant had been conducting hearings. The employing establishment further indicated that appellant was on his way to dinner when the accident occurred. He had driven from the downtown office to a local funeral home at 10151 Gravois, where he met his father. Appellant then proceeded to drive from the funeral home to the restaurant at 7350 Gravois, which was approximately 2.5 miles from the funeral home. The motor vehicle accident occurred during the portion of the trip from the funeral home to the restaurant. Appellant was operating a rental vehicle when the accident occurred. The employing establishment also provided a copy of appellant's travel authorization and approved expenditures.

In a decision dated February 10, 2005, the Office denied appellant's claim on the basis that he was not in the performance of duty when the December 6, 2004 injury occurred. The Office explained that the motor vehicle accident occurred while appellant was engaged in the personal activity.

LEGAL PRECEDENT

The Federal Employees' Compensation Act covers an employee 24 hours a day when he or she is on travel status or on a temporary-duty assignment or special mission and engaged in activities essential or incidental to such duties. However, when the employee deviates from the normal incidents of his or her trip and engages in activities, personal or otherwise, that are not reasonably incidental to the duties of the temporary assignment contemplated by the employer, the employee ceases to be under the protection of the Act and any injury occurring during these deviations is not compensable.¹

ANALYSIS

The record reveals that appellant was on official travel status in St. Louis, Missouri, from December 5 to 10, 2004. In his treatise on workers' compensation law, *Larson* explains:

"Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, the injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable."²

On the evening of December 6, 2004, appellant was involved in a motor vehicle accident at approximately 6:40 p.m. while in route to a restaurant at 7350 Gravois to have dinner with his father, whom he had just met at a local funeral home located at 7350 Gravois. The restaurant was reportedly a short distance from the funeral home and appellant was following his father to

¹ *Kenneth B. Briggs*, 54 ECAB ____ (Docket No. 02-2131, issued February 20, 2003); *Richard Michael Landry*, 39 ECAB 232 (1987).

² A. Larson, *The Law of Workers' Compensation* § 25.01 (2000).

the restaurant when the motor vehicle accident occurred. The restaurant was however nearly 10 miles from the employing establishment office where appellant conducted his business. While an employee's reasonable travel to and from a dining establishment would normally be covered, in this case, appellant deviated from the normal incidents of his trip and engaged in a personal activity when he went to meet his father at the funeral parlor prior to dinner.³

Whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, in *Thomas E. Keplinger*,⁴ the Board stated:

“[T]he Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represents such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment. As the Board noted in *Frezzell*, the standard to be used in determining that an employee has deviated from his employment requires a showing that the deviation was ‘aimed at reaching some specific personal objective.’”⁵

After completion of his work duties, appellant engaged in a personal activity unrelated to his employment which constitute a deviation. Appellant met his father at a funeral home and then proceeded to follow his father to a restaurant in the vicinity of the funeral home, his injury occurred at this point in time. Appellant's objective at this point in time was clearly to visit with his father, a personal objective which was not incidental to his work assignment. Appellant has not submitted any evidence to the record to substantiate that his deviation from his course of employment had ended at the time of his injury.

As appellant was not engaged in activities essential or incidental to his duties, the Office properly found that he was not in the performance of duty at the time of his December 6, 2004 motor vehicle accident.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on December 6, 2004.

³ *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998).

⁴ 46 ECAB 699 (1995).

⁵ 40 ECAB 1291 (1989); *see also Rebecca LeMaster*, 50 ECAB 254 (1999).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board